EASTERN REALTY CO. LTD. v. CHAN HUA SENG

[A.C.J. (Wee Chong Jin C.J.) April 27, 1967]

[Singapore — Civil District Court Appeal No. 12 of 1967]

Landlord and Tenant — Recovery of possession — Structural alteration to building — Whether repairs — "New building" — Control of Rent Ordinance (Cap. 242), s. 2.

The appellants on October 1, 1958, granted the respondent a month to month tenancy of controlled premises, comprising of a single storey shed made of plank walls and timber pillars with a zinc or corrugated iron roof measuring 47' x 29' and a small open shed with no walls the zinc roof of which was supported by four wooden pillars, at a monthly rent of $20. In May 1959 on application to the Rent Conciliation Board the rent was increased to $37.13 a month. In connection with this application the secretary of the appellants visited the land and prepared a plan as an exhibit. The plan showed the two buildings on the land and showed that the smaller open shed had become a bigger shed measuring 19' x 9'. In October 1964 the appellants discovered that without their knowledge and consent four new buildings had been built on the land two of which appeared to be in place of the former buildings on it. As a result of this discovery the appellants sued the respondent for the recovery of possession. At the trial the respondent admitted having built two new buildings but claimed that the other two were not new buildings but were the original two buildings, one of which he had substantially repaired and not re-built and the other of which had merely been extended in size. The learned district judge found that on the evidence the respondent had merely repaired the original two buildings. On appeal it was contended that the learned district judge was wrong in his finding and should have found on all the evidence that those two buildings were no longer the two former buildings which had merely been repaired but had become in fact two new buildings built on the site of the former buildings.

Held: (1) the question whether a building because of such substantial and/or other alterations becomes a "new building" is always a question of degree depending on the facts of each particular case. No test of universal application can be laid down;

(2) the nature and extent of the structural alterations and other work carried out to the former one-storeyed building to become a two-storeyed building went far beyond repairs: there had been such a fundamental change to the old building that it could no longer be said to exist and that a new building had replaced it;

(3) with regard to the shed it would be a misuse of language to describe the work necessary to change an open shed 19' x 9' to a timber walled structure 44' x 11 2/3' as repairs;

(4) in the circumstances, each of those two buildings was a "new building" within the expression "any new building built or completed after the 7th day September 1947" in section 2 of the Control of Rent Ordinance.

Case referred to:—

(1) *Kai Nam (a firm)* v. *Ma Kam Chan* [1956] A.C. 358.

DISTRICT COURT APPEAL.

S. H. D. Elias for the appellants.

M. N. Samy for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal from the judgment of the district judge dismissing a claim by the appellants Eastern Realty Company Limited against the respondent Chan Hua Seng for recovery of possession of a piece of land at Hoot Kiam Road Singapore marked on the Government Resurvey Map as Lot 45[1] T.S. XXIV together with the four buildings erected on it.

In May 1958 the respondent wrote to the appellants asking for a tenancy of the land in question. As a result of that letter the secretary of the appellants visited the land and found on it a single storey shed made of plank walls and timber pillars with a zinc or corrugated iron roof measuring approximately 47 feet long by 29 feet wide. He also saw on it a small open shed with no walls the zinc roof of which was supported by four wooden pillars. The size of this shed was between 8 to 10 feet long and 4 to 5 feet wide and it was used for drying planks.

The appellants granted the respondent a month to month tenancy commencing from the 1st October 1958 at a monthly rent of $20. It was common ground that the two buildings then on the land had been erected before September 1947 so that this letting was governed by the provisions of the Control of Rent Ordinance, Chapter 242.

In May 1959 on application to the Rent Conciliation Board the rent was increased to $37.13 a month. In connection with this application the secretary of the appellants again visited the land and prepared a plan drawn to a scale of 1 chain to 1 inch which was produced as an exhibit at the proceedings before the Rent Conciliation Board and was also an exhibit at the trial of this action. This plan showed the two buildings on the land and showed that the smaller open shed had become a bigger shed measuring 19 feet long by 9 feet wide.

In October 1964 the appellants discovered that without their knowledge and consent four new buildings had been built on the land two of which appeared to be in place of the former buildings on it. As a result of this discovery the present action was instituted.

At the trial the respondent admitted having built two new buildings but claimed that the other two buildings were not new buildings but were the original two buildings, one of which he had substantially repaired and not re-built and the other of which had merely been extended in size. The trial judge found that on the evidence the respondent had merely repaired the original two buildings.

The appellants contend that the trial judge was wrong in his findings and should have found on all the evidence that those two buildings were no longer the two former buildings which had merely been repaired but had become in fact two new buildings built on the site of the former buildings.

It is essential therefore to examine closely the evidence adduced at the trial in respect of these two buildings. The secretary of the appellant said of his visit to the site in October 1964 that in place of the single storey plank and timber shed he saw a new two storey building, made of wooden plank walls, standing on brick or concrete foundations about three to four feet high and this building had glass windows. He said it was not at all similar to the original shed. In place of the open shed he saw a much larger shed which had walls on three sides and had a corrugated zinc sheeting roof supported by pillars. This shed was being used for storing timber and as a general store.

The appellants engaged a chartered architect to inspect the land. He visited the land on three occasions, the first of which was on 28th July 1964 when he saw three buildings and one small shed. He was there for about a half hour. He next visited it with his assistants about a week later to take measurements. Measurements were then taken and plans were prepared and signed by him showing the site and the buildings on it. These plans were put in as exhibits at the trial. According to the architect, one building shown on the plan is a two storey structure of timber posts and beam construction, with timber corrugated asbestos roof and a canopy of corrugated iron. The timber posts were of single pieces from the ground floor to roof level. The side walls were made of timber, except the base which was of brick, cement plaster of a height of three feet. The windows were of metal framed with glass and there was an internal staircase at the rear of the building. According to him all the materials used in this building appeared to be new materials.

Another building shown on the plans is a single storeyed building, 44' 4" x 11' 8", with horizontal timber weatherboard walls and a roof of corrugated iron. The floor was new, made of cement rendering and the materials used for this building were partly new and partly old materials.

It was not in dispute that these two buildings as described by the architect refer to the two buildings which the respondent claimed had been on the land when it was first let to him.

The respondent who gave evidence at the trial that he was a house repairer by occupation merely said that these two buildings were built by his father who died in 1945 but in cross-examination admitted the roof of the two storeyed structure was new, the floor was new, the brick base of the walls was new, all except one or two windows were new, the timber pillars were single pieces of timber from ground floor to the roof and of some significance agreed that the old building no longer existed and that the present building was "done" in 1964.

With regard to the other building, he said that only one quarter of it was new but agreed the roof timbers were new, although he denied that there were no side walls before 1964 and that the original open shed had been entirely demolished and replaced by the present three-walled structure.

He called witnesses to support his evidence, including his mother, a hawker sub-tenant, an ex-bill collector sub-tenant and two former employees of his deceased father. Although the trial judge described them as "an assortment of witnesses" he would appear to have accepted their testimony that these two buildings had merely been repaired and were not new buildings replacing the original two buildings.

The only question I am asked to decide is whether or not each of these two existing buildings can properly be held to be a new building within the meaning of the expression "any new building built or completed after the 7th day of September 1947" in section 2 of the Control of Rent Ordinance (Chapter 242), where "premises" is defined to mean:—

> "any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building whether of permanent or temporary construction in which persons are employed or work and any part of any such building let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord but does not include any new building built or completed after the 7th day of September, 1947".

Counsel for the appellant submits they are and relies on the case of *Kai Nam (a firm)* v. *Ma Kam Chan.*[1] This was a consolidated appeal from six orders of the Supreme Court of Hong Kong (Appellate Jurisdiction). The appellants were respectively tenants of a number of temporary one-storey premises in Hong Kong which had been erected, after the passing of the Landlord and Tenant Ordinance, 1947, on the site of a four-storeyed dwelling house which had been almost completely demolished by enemy action during World War II. In building the shops almost the whole of the old foundation of the former building was retained and also the lower part of the old walls to an average height of three bricks above ground level, the old drains were used, the old concrete flooring was largely retained and also most of the old lavatories. The new walls were not as thick as the old. The plan of the floor was the same as the old ground floor. The respondent landlord claimed possession, after terminating the contractual monthly tenancies of the appellants, on the ground that the premises were "entirely new" buildings and excluded from the operation of the Landlord and Tenant Ordinance, 1947, which by section 3(1)(a) provided expressly that the Ordinance should not apply to "any entirely new building".

The district judge who tried the case held

that since the existing structures included almost the whole of the foundations and concrete floors and an average of three bricks above ground level, the word "entirely" made it impossible to say that the new structure was an entirely new building. The Supreme Court allowed the appeal by the respondent landlord and the Privy Council upheld the judgment of the Supreme Court and dismissed the appellants' appeal.

Lord Cohen who delivered the judgment of the Privy Council said at page 368:—

"In their Lordships' opinion the district judge laid too much stress on the word 'entirely' and paid insufficient attention to the words 'new building' and to the distinction between a building and the materials of which it is composed. They agree with Gould Ag. C.J. that 'where the damage has been so extensive that repair is impossible, when there is nothing left which could possibly be called a building, then surely the existence of that building as such is terminated' and that 'a building replacing it would be an entirely new building even though it was built on the same foundations and had the same floor' as the old one."

Later on at the same page Lord Cohen said:—

"Their Lordships agree with the Supreme Court that the words 'entirely new' in section 3(1)(a) are used in relation to the building and not to the materials of which it is composed. . . .".

In my opinion the only assistance, in relation to the question posed by this appeal, that can be derived from the Hong Kong case is that even though a building was erected on the same foundations and had the same floor as a former building it can nevertheless be "an entirely new building" and *a fortiori* a "new building" in an enactment relating to controlled tenancies. It also perhaps affords authority to support a contention that the word "new" in our section 2 definition of "premises" is used in relation to the building and not to the materials of which it is composed.

The question whether a building because of such substantial structural and/or other alterations becomes a "new building" is in my opinion always a question of degree depending on the facts of each particular case. No test of universal application can in my view be laid down.

With regard to the present two-storeyed building the nature and extent of the structural alterations and other work carried out to the former one-storeyed building is beyond dispute. I have already set them out and in my judgment they clearly went far beyond repairs as found by the trial judge. I would hold that there has been such a fundamental change to the old building so that it can no longer be said to exist and that a new building has replaced it.

With regard to the other building the answer is in my opinion the same. The old building on the undisputed facts was an open shed 19 feet long by 9 feet wide with no walls the zinc roof of which was supported by four wooden pillars. It has now become a single storeyed building, 44 feet long by 11 feet 8 inches wide, with horizontal timber walls, a corrugated iron roof and a new cement floor. The trial judge nevertheless found that "only repairs had been done" to this shed and had been carried out using partly old and partly new materials. In my opinion it would be a misuse of language to describe the work necessary to change an open shed, 19′ x 9′, to a timber walled structure, 44′ x 11 2/3′, as repairs.

I would accordingly decide that each of these two existing buildings is a "new building" within the expression "any new building built or completed after the 7th day of September 1947" in section 2 of the Ordinance.

In the result the appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Elias Bros.; M. N. Samy.*

YEO SEOW INN v. CHAN KHIT

[O.C.J. (Chua J.) April 28, 1967]

[Singapore — Suit No. 306 of 1965]

Landlord and Tenant — Recovery of possession — Whether premises controlled — Widow of statutory tenant — Protection of — Estoppel — Intention to create legal relationship — Control of Rent Ordinance (Cap. 242).

The plaintiff was the owner of the vacant land known as Lot 119-5 T.S. XXIV (hereinafter referred to as the said premises) at Jervois Road. In 1946 one Teo the defendant s husband approached the plaintiff regarding the use of the land by Teo. They then entered into an agreement in the Chinese language dated July 4, 1946 in the following terms:

> "TEO KUM ENG, the person executing this agreement, has rented at Jervois (?) Road, a vacant land which extends from outside the soap-making place to the public road, and the width of which is bounded by the road filled by the landlord. The monthly rental shall be Ten dollars only. However, it is agreed that should the landlord have any article to be deposited on this land, both may jointly enjoy. If and when the landlord requires the use of the land, he can give a month's notice in advance and the tenant shall surrender with vacant possession within one month after the receipt of the notice.
>
> This is agreed between the two parties without any regret by either. Fearing words of mouth bear no evidence, two copies of the agreement is specially made, with one copy to be held by each party as proof."

Subsequently the defendant and her husband filled the land and built a house thereon known as No. 24 Jervois Road and moved into the said premises sometime at the end of 1946. The defendant's husband died in 1964 and after her husband's death she continued to pay the ground rent by cheque (for 5 months) but the plaintiff did not issue any receipt.

The plaintiff's case was that under the agreement dated July 4, 1946, Teo was only a licensee and he was only allowed to store building materials on the land.